

# Agenda Item Form

Agenda Date: May 11, 2004

**Districts Affected:** # 1

**Dept. Head/Contact Information:** Irene Ramirez, P.E., Interm City Engineer Ext. 4422/Bashar Abugalyon, P.E.,  
Interim Assistant City Engineer Bashar Abugalyon, P.E. Ext. 4157

**Type of Agenda Item:**

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Resolution   | <input type="checkbox"/> Staffing Table Changes   | <input type="checkbox"/> Board Appointments        |
| <input type="checkbox"/> Tax Installment Agreements                               | <input type="checkbox"/> Tax Refunds              | <input type="checkbox"/> Donations                 |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement                         | <input type="checkbox"/> Budget Transfer          | <input type="checkbox"/> Item Placed by Citizen    |
| <input type="checkbox"/> Application for Facility Use                             | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements                                    | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application         |
| <input checked="" type="checkbox"/> Other <u>Conditional 'B' Building Permits</u> |   |  |

**Funding Source:**

- ☐ General Fund  
☐ Grant (duration of funds: \_\_\_\_\_ Months)  
☐ Other Source: \_\_\_\_\_

**Legal:**

- ☐ Legal Review Required      Attorney Assigned (please scroll down): None      ☐ Approved      ☐ Denied

**Timeline Priority:**   ☐ High      ☐ Medium      ☐ Low      # of days: \_\_\_\_\_

**Why is this item necessary:**

Requested by: Quantum Engineering for Colony Development, LTD.

**Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:**

No costs

**Statutory or Citizen Concerns:**

In accordance with Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits  
Franklin Hills Unit 2 Subdivision

**Departmental Concerns:**

Department recommends approval

CITY CLERK DEPARTMENT  
2004 MAY 6 PM 1 46

Date: May 5, 2004

TO: City Clerk

FROM: Lucy L. McGee

Please place the following item on the Regular Agenda for the

Council Meeting of May 11, 2004.

Item should read as follows:

Discussion and action on approval of Conditional "B" building permits for  
Franklin Hills Unit 2 Subdivision (District 1)

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Special Instructions: ENGINEERING DEPARTMENT FOR INFORMATION  
CONTACT INTERIM CITY ASSISTANT CITY ENGINEER BASHAR  
ABUGALYON, P.E. AT 541-4157.

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City Clerk's Use

Action Taken: \_\_\_\_\_ Item No. \_\_\_\_\_

ENGINEERING DEPARTMENT

Development Division

DATE: May 5, 2004

TO: Mayor & City Council

FROM: Bashar Abugalyon, P.E., Development Division Interim Assistant  
City Engineer

SUBJECT: Conditional "B" Building Permits  
Franklin Hills Unit 2 Subdivision (District 1)



The above referenced request is scheduled for City Council Regular Agenda on May 11, 2004. The purpose of this memorandum is to provide you with general information concerning this request.

Under the City Building and Administrative Code, Section 18.02.103.1.1.6, developer may obtain building permits for up to 25% of the lots before all of the required subdivision improvements have been completed and accepted by the City. These are commonly called, "unconditional permits". "Conditional A" permits are permitted for the next 25% (up to 50% of the total) of lots. To obtain "Conditional A" permits, the developer must provide water and sewer service, curbing (but not street paving), drainage facilities, etc., necessary for the site in question. The developer must additionally provide a signed acknowledgment by the permit applicant that the certificate of occupancy for that lot will not be signed acknowledgment by the permit applicant that the certificate of occupancy for that lot will not be issued until all of the improvements affecting that lot have been completed and approved by the City.

Lastly, "Conditional B" permits may be issued if the developer complies with all of the "Conditional A" requirements and obtains permission from the City Council. In order for the City Council to grant such permission, the Council must make a finding, "...that additional permits should be issued based upon economic hardship or public benefit demonstrated by the subdivider".

At this hearing, then, the City Council should hear testimony or other evidence from the developer that justifies allowing more permits to be issued before all of the needed improvements have been accomplished, before deciding the issue.

If I can be of any further assistance regarding this matter, please don't hesitate to contact me at extension 4157.



May 5, 2004

CITY OF EL PASO  
Engineering Department  
2 Civic Center Plaza, 4<sup>th</sup> floor  
El Paso, Texas 79901-1196

Attn: Ms. Irene Ramirez  
Interim City Engineer

RE: Franklin Hills Unit 2 Subdivision  
El Paso, Texas

Dear Ms. Ramirez:

As you are well aware, all improvements have been completed for Franklin Hills Unit 2 and the request for acceptance has been completed subject to City Council approval.

Please be advised all the public improvements for Franklin Hills Unit 2 Subdivision have been completed, and the request for acceptance is also pending City Council approval.

Subsequent to the City Council (5/4/04) tabling of the adjacent 20 acre proposed city park item, we understand that the request for acceptance of Franklin Hills Unit 2 will be delayed. Therefore, we are respectfully requesting Mayor and City Council members to approve conditional "B" Building Permits for the remainder of the lots within the subdivision.

Attached for your files are copies of the development agreements with the builders.

We appreciate your assistance. If you have any questions or require additional information, please do not hesitate to call our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Gonzales'.

Robert A. Gonzales, PE  
President

RAG/asp

Attachments

cc: Omar K. Soueidan

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is entered into effective the 2nd day of April, 2004, by and between Colony Partners L.P. (hereinafter referred to as "Developer"), a Texas corporation, and Winton & Assoc. Inc. (hereinafter referred to as "Applicant"), a Texas corporation, for the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code.

WHEREAS, Developer is the owner and developer of Franklin Hills Unit 2, a subdivision in the City of El Paso County, Texas (hereinafter referred to as the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two-family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso Municipal code (Building and Construction) (hereinafter referred to as the "Code"), provides that although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that the Developer and Applicant execute and file this Agreement in the office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Title 18 (Building and Construction) of the El Paso Municipal Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. **Incomplete Subdivision Improvements.** Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the Deputy Director for Engineering of the City of El Paso.
2. **Issuance of Building Permits.** Developer and applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (a) water and sewer service, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvement required by the Deputy Director for Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to as the "minimum improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:
  - a. an Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);
  - b. a Conditional "A" Building Permit may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and
  - c. a Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to the construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the subdivider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.
3. **Risk of Commencement.** Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and holds Declarant harmless from

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BEST AVAILABLE FILM

all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of the Subdivision improvements.

4. **Certificate of Occupancy.** Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
5. **Release.** Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The Deputy Director for Engineering is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.
6. **Binding Effect.** This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

**DEVELOPER:**

Colony Partners, LP

By: \_\_\_\_\_

Russell Hanson, Manager

**APPLICANT:**

Winton & Assoc., Inc., a Texas corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

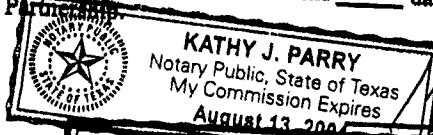
Herschel Stringfield  
President

**POOR QUALITY ORIGINAL  
BEST AVAILABLE FILM**

State of Texas

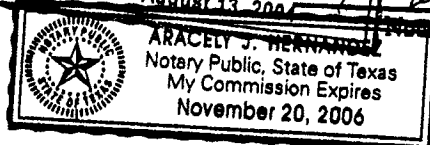
County of El Paso

This instrument was acknowledged before me on this 2nd day of April, 2004, by Russell Hanson, of Colony Partners, LP, a Texas Limited Partnership.



State of Texas

County of El Paso



This instrument was acknowledged before me on this 2nd day of April, 2004, by Herschel Stringfield of Winton & Assoc., Inc., a Texas corporation, on behalf of said corporation.

Aracely J. Hernandez  
Notary Public, State of Texas

**RETURN TO:**  
Colony Development  
4483 N. Mesa, Ste. 201  
El Paso, TX 79902

Doc# 20040030016  
# Pages 2  
4/2/2004 4:00:35 PM 3  
Filed & Recorded in  
Official Records of  
EL PASO COUNTY  
WALDO ALARCON  
COUNTY CLERK  
Fees \$16.00

ANY PROVISIONS HEREIN WHICH RESTRICT THE SALE, RENTAL  
OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR  
OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW  
STATE OF TEXAS  
COUNTY OF EL PASO

I hereby certify that this instrument was filed on the date and time stamped  
hereon by me and was duly recorded in the volume and page of the Official  
Public Record of Real Property El Paso County.



EL PASO COUNTY, TEXAS

*Waldo Alarcon*  
APR 02 2004

**END OF  
INSTRUMENT**

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is entered into effective the 26 day of March, 2004, by and between Colony Partners L.P. (hereinafter referred to as "Developer"), a Texas corporation, and Quality Craft Homes (hereinafter referred to as "Applicant", a Texas corporation, for the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code.

WHEREAS, Developer is the owner and developer of Franklin Hills Unit 2, a subdivision in the City of El Paso County, Texas (hereinafter referred to as the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two-family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso Municipal code (Building and Construction) (hereinafter referred to as the "Code"), provides that although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that the Developer and Applicant execute and file this Agreement in the office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Title 18 (Building and Construction) of the El Paso Municipal Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. **Incomplete Subdivision Improvements.** Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the Deputy Director for Engineering of the City of El Paso.
2. **Issuance of Building Permits.** Developer and applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (a) water and sewer service, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvement required by the Deputy Director for Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to as the "minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:
  - a. an Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);
  - b. a Conditional "A" Building Permit may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and
  - c. a Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to the construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the subdivider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.
3. **Risk of Commencement.** Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and holds Declarant harmless from

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BEST AVAILABLE FILM



all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of the Subdivision improvements.

4. **Certificate of Occupancy.** Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
5. **Release.** Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The Deputy Director for Engineering is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.
6. **Binding Effect.** This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

DEVELOPER:

Colony Partners, LP

By:

  
Russell Hanson, Manager

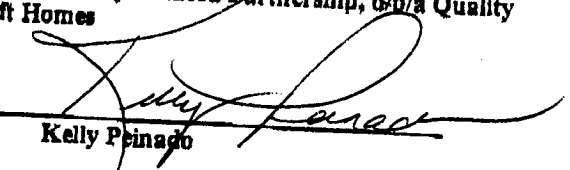
State of Texas }

County of El Paso }

APPLICANT:

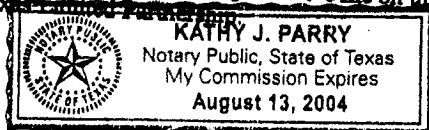
Peinado Family Limited Partnership, d/b/a Quality Craft Homes

By:

  
Kelly Peinado

**POOR QUALITY ORIGINAL  
BEST AVAILABLE FILM**

This instrument was acknowledged before me on this 26 day of March, 2004, by Russell Hanson, of Colony Partners, LP, a Texas Limited Partnership.

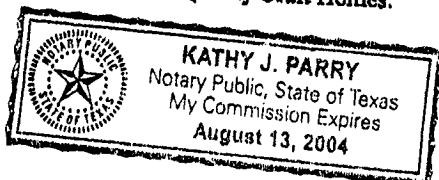


State of Texas }

County of El Paso }

  
Notary Public, State of Texas

This instrument was acknowledged before me on this 26 day of March, 2004, by Kelly Peinado of Peinado Family Limited Partnership, d/b/a Quality Craft Homes.



  
Notary Public, State of Texas

Doc# 20040027539

# Pages 2

3/30/2004 9:08:25 AM

Filed & Recorded in  
Official Records of

EL PASO COUNTY

WALDO ALARCON

COUNTY CLERK

Fees \$16.00

ANY PROVISIONS HEREIN WHICH RESTRICT THE SALE, RENTAL  
OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR  
OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW  
STATE OF TEXAS COUNTY OF EL PASO

I hereby certify that this instrument was filed on the date and time stamped  
hereon by me and was duly recorded in the volume and page of the Official  
Public Record of Real Property El Paso County.



EL PASO COUNTY, TEXAS

*Waldo Alarcon*

MAR 30 2004

**END OF INSTRUMENT**

PLEASE RETURN RECORDED DOCUMENT TO:

COLONY DEVELOPMENT L.P.  
4487 N. MESA SUITE 201  
EL PASO, TX 79902

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is entered into effective the 24 day of Nov., 2003, by and between Colony Partners L.P., (hereinafter referred to as "Developer"), a Texas corporation, and Padilla Homes, Inc. (hereinafter referred to as "Applicant", a Texas corporation, for the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code.

WHEREAS, Developer is the owner and developer of Franklin Hills Unit 2, a subdivision in the City of El Paso County, Texas (hereinafter referred to as the "Subdivision"); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two-family dwelling(s) on a lot or lots within the Subdivision; and

WHEREAS, the El Paso Municipal code (Building and Construction) (hereinafter referred to as the "Code"), provides that although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that the Developer and Applicant execute and file this Agreement in the office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Title 18 (Building and Construction) of the El Paso Municipal Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. **Incomplete Subdivision Improvements.** Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the Deputy Director for Engineering of the City of El Paso.
2. **Issuance of Building Permits.** Developer and applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (a) water and sewer service, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvement required by the Deputy Director for Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to as the "minimum improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:
  - a. an Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);
  - b. a Conditional "A" Building Permit may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and
  - c. a Conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to the construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the subdivider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.
3. **Risk of Commencement.** Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and holds Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of the Subdivision improvements.

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BEST AVAILABLE FILM

4. **Certificate of Occupancy.** Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
5. **Release.** Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The Deputy Director for Engineering is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.
6. **Binding Effect.** This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

**DEVELOPER:**

Colony Partners, LP

By: \_\_\_\_\_

Russell Hanson, Manager

**APPLICANT:**

Padilla Homes, Inc.

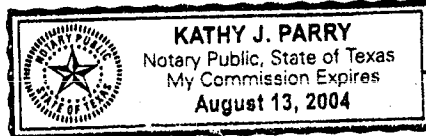
By: \_\_\_\_\_

Rafael Padilla, President

State of Texas }

County of El Paso }

This instrument was acknowledged before me on this 17 day of NOVEMBER, 2003, by Russell Hanson, as Manager of Colony Partners, LP, a Texas Limited Partnership.

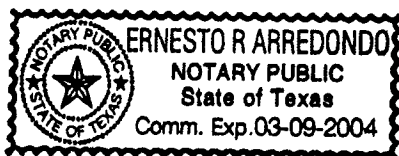


Notary Public, State of Texas

State of Texas }

County of El Paso }

This instrument was acknowledged before me on this 17 day of NOVEMBER, 2003, by Rafael Padilla, as President of Padilla Homes, Inc.



Notary Public, State of Texas

NOT RECORDED RETURN TO:

**POOR QUALITY ORIGINAL  
BEST AVAILABLE FILM**

2003 NOV 17 4 27 PM

Doc# 20030114927  
# Pages 2  
11/25/2003 11:06:48 AM  
Filed & Recorded in  
Official Records of  
EL PASO COUNTY  
WALDO ALARCON  
COUNTY CLERK  
Fees \$16.00

ANY PROVISIONS HEREIN WHICH RESTRICT THE SALE, RENTAL  
OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR  
OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW  
STATE OF TEXAS  
COUNTY OF EL PASO

I hereby certify that this instrument was filed on the date and time stamped  
hereon by me and was duly recorded in the volume and page of the Official  
Public Record of Real Property El Paso County.



EL PASO COUNTY, TEXAS

*Waldo Alarcon*

NOV 25 2003

**END OF  
INSTRUMENT**

PLEASE RETURN RECORDED DOCUMENT TO:

COLONY DEVELOPMENT L.P.  
4467 N. MESA SUITE 201  
EL PASO, TX 79902

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (hereinafter referred to as "Agreement") is entered into effective the 22 day of October, 2003, by and between Colony Partners L.P., (hereinafter referred to as "Developer"), a Texas Limited Partnership, and Davidson Custom Homes, Inc. (hereinafter referred to as "Applicant", a Texas corporation, for the purpose of complying with Title 18 (Building and Construction) of the El Paso Municipal Code.

**WHEREAS**, Developer is the owner and developer of Franklin Hills Unit 2, a subdivision in the City of El Paso County, Texas (hereinafter referred to as the "Subdivision"); and

**WHEREAS**, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, but Applicant desires to obtain a building permit(s) for a single-family detached dwelling(s), single-family attached dwelling(s), or two-family dwelling(s) on a lot or lots within the Subdivision; and

**WHEREAS**, the El Paso Municipal code (Building and Construction) (hereinafter referred to as the "Code"), provides that although the subdivision improvements have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement that the Developer and Applicant execute and file this Agreement in the office of the County Clerk of El Paso County, Texas;

**NOW, THEREFORE**, for good and valuable consideration, and in accordance with the provisions of Title 18 (Building and Construction) of the El Paso Municipal Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

1. **Incomplete Subdivision Improvements.** Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the Deputy Director for Engineering of the City of El Paso.
2. **Issuance of Building Permits.** Developer and applicant acknowledge that building permits for a lot within the Subdivision may be issued for single-family detached dwellings, single-family attached dwellings, or two-family dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (a) water and sewer service, (b) curbing conforming with the appropriate street design cross-section, (c) any drainage facility, and (d) any other remaining public improvement required by the Deputy Director for Engineering in order to adequately provide for construction on the lot (collectively hereinafter referred to as the "minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:
  - A. **an Unconditional Building Permit** may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);
  - B. **a Conditional "A" Building Permit** may be issued for the next twenty-five percent (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and
  - C. **a Conditional "B" Building Permit** may be issued for the remaining lots within the Subdivision if, in addition to the construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the subdivider, and the Declarant and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

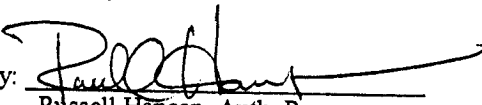
STATE RETURN REQUIRED DOCUMENT

FILED IN 2003 OCT 22 PM 4:00  
 COUNTY OF EL PASO, TEXAS  
 CLERK OF COUNTY


3. **Risk of Commencement.** Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision improvements, and hereby releases and holds Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of a dwelling unit(s) prior to the full completion and acceptance of all Subdivision improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of the Subdivision improvements.
4. **Certificate of Occupancy.** Declarant and Applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the Deputy Director for Engineering, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.
5. **Release.** Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The Deputy Director for Engineering is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.
6. **Binding Effect.** This Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

This Agreement is executed to be effective on the date and year first set forth above.

DEVELOPER  
Colony Partners L.P.

By:   
Russell Hanson, Auth. Rep

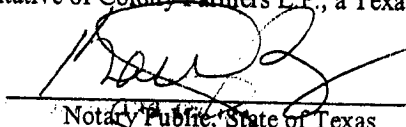
APPLICANT  
Davidson Custom Homes, Inc.

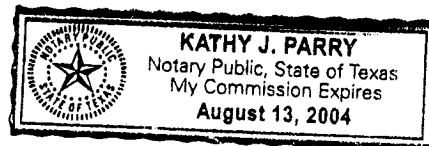
By: 

State of Texas }  
County of El Paso }

This instrument was acknowledged before me on this 22 day of Oct., 2003, by Russell Hanson, as Authorized Representative of Colony Partners L.P., a Texas Limited Partnership.

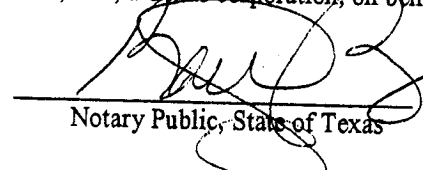
NOTARY PUBLIC

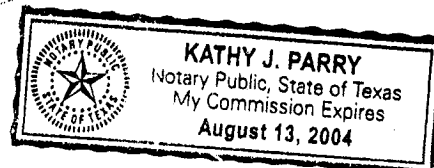
  
Notary Public, State of Texas



State of Texas }  
County of El Paso }

This instrument was acknowledged before me on this 23 day of Oct., 2003, by Terri Davidson, President of Davidson Custom Homes, Inc., a Texas corporation, on behalf of said corporation.

  
Notary Public, State of Texas



2003 OCT 22 10:23 AM

Doc# 20030103807

# Pages 2

10/22/2003 10:23:37 AM

Filed & Recorded in  
Official Records of

EL PASO COUNTY

WALDO ALARCON

COUNTY CLERK

Fees \$16.08

3

ANY PROVISIONS HEREIN WHICH RESTRICT THE SALE, RENTAL  
OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR  
OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW  
STATE OF TEXAS COUNTY OF EL PASO

I hereby certify that this instrument was filed on the date and time stamped  
hereon by me and was duly recorded in the volume and page of the Official  
Public Record of Real Property El Paso County.



EL PASO COUNTY, TEXAS

*Waldo Alarcon*

OCT 22 2003

**END OF  
INSTRUMENT**

PLEASE RETURN RECORDED DOCUMENT TO:

COLONY DEVELOPMENT L.P.  
4407 N. MESA SUITE 201  
EL PASO, TX 79902

PLEASE RETURN TO:

MENTOR:

COPY TO: MENTOR  
4407 N. MESA SUITE 201  
EL PASO, TX 79902